least lost to the commission should a use be declared private, while if held public the aggrieved party has an appeal to the courts.[31] But it is submitted that the real difficulty is the failure on the part of the commissions to comprehend the basic principles underlying governmental control of businesses and the failure to appreciate and respect constitutional limitations.

RECENT CASES

AGENCY — SCOPE OF EMPLOYMENT — TEST. — It was the duty of the defendant's automobile driver to take a certain infirm employee of the defendant home each evening from work. One evening on arriving home this employee directed the driver to take his wife's dressmaker to her home which was in the direction of but far beyond the garage. On this mission, and before reaching the garage, and on the route that the driver would have taken in the course of his employment in driving the car to the garage, the car ran into and injured the plaintiff who was using due care. *Held*, the defendant is not liable. *Clawson* v. *Pierce Arrow Motor Car Co.*, 170 N. Y. Supp. 310 (App. Div.).

The principal case raises the question of whether the servant was within the scope of his employment when the injury occurred in doing, from the objective point of view, the very act authorized, and when the servant was innocent of any determination to disobey the master. The exact facts of the principal case are novel, but in a similar case the subjective test was held decisive. *Thompson* v. *Aultman and Taylor*, 96 Kans. 259, 150 Pac. 587. This view accords with the principles enunciated by leading cases which consider the test to be whether the servant was merely deviating or on an independent journey. *Joel* v. *Morison*, 6 C. & P. 501; *Mitchell* v. *Crassweller*, 13 C. B. 237. This in effect makes the test whether what the servant was doing was merely a poor or roundabout way of doing the master's work or no way at all. See *Limpus* v. *London General Omnibus Co.*, 1 H. & C. 526, 542–43. To determine this, modern cases have considered along with the objective test the intent of the servant. *Fleischer* v. *Durgen*, 207 Mass. 435, 93 N. E. 801; *Provo* v. *Conrad*, 130 Minn. 412, 153 N. W. 753; *Colewell* v. *Aetna Bottle & Stopper Co.*, 33 R. I. 531, 82 Atl. 388; *Healey* v. *Cockrill*, 202 S. W. 229 (Ark.); *Dockweiter* v. *American Piano Co.*, 94 Misc. Rep. 712, 160 N. Y. Supp. 270; *Jones* v. *Strickland*, 77 So. 562 (Ala.); *Trombley* v. *Stevens-Duryea Co.*, 206 Mass. 516, 92 N. E. 764; *Nelson Business College Co.* v. *Lloyd*, 60 Ohio St. 448, 54 N. E. 471; *Davies* v. *Anglo-American Tire Co.*, 145 N. Y. Supp. 341. The principal case is interesting in that it decides that the whole journey from the time of taking the dressmaker in the car is independent and not a roundabout way of performing the master's work, although objectively there had been at the time of the accident not even a deviation.

CONFLICT OF LAWS — ENFORCEMENT OF FOREIGN STATUTES — PENAL NATURE OF DEATH STATUTE. — For injuries resulting in death a Massachusetts statute gave damages of $500 to $10,000, depending upon "the degree of culpability" of the person causing the same. (R. L. c. 171, § 2, as amended by L. 1907, c. 375). The administrator of the deceased sues in New York under this statute. *Held*, he can recover. *Loucks* v. *Standard Oil Co. of N. Y.*, 120 N. W. 198 (N. Y.).

Suits for torts committed in one state may be brought in another unless public policy forbids. See 31 HARV. L. REV. 1161. But penal statutes will not be so enforced. *The Antelope*, 10 Wheat. (U. S.) 66, 123. In the principal

[31] See Salt Lake City *v.* Utah Light & Traction Co., 173 Pac. 556 (Utah) (1918).